IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6157 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DY.EXECUTIVE ENGINEER

Versus

RAJABHAI BHAGWANBHAI

Appearance:

MR HS MUNSHAW for Petitioner

MR MURALI N DEVNANI for Respondent No. 1

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 25/04/2000

ORAL JUDGEMENT

#. Mr.Munshaw, learned advocate for the petitioner. Mr.Murli.N.Devnani, for the respondent workmen. The petitioner- Deputy Executive Engineer, Amreli District Panchayat, Rural Sub Division, has filed the present petition being aggrieved by the judgment and order passed

by the Labour Court in Reference Case No.1153/89 Rajkot, Reference Case No.164/93 Bhavnagar and Reference Case No.94/98 Amreli, dated 20.5.1999. By the judgment and order of the Labour Court the respondent workmen who was terminated from the services by the authorities by an oral order on 21.12.1988 is ordered to be reinstated in service with continuity of the service with full back wages. It is held by the Labour Court that the oral termination of the respondent workmen was not only illegal, but also violative of the principles of natural justice and is in violation of the provisions of Sec.25 F of the I.D.Act. Mr.Munshaw, learned advocate appearing for the petitioner vehemently submitted that the Labour Court has committed an error in awarding the reinstatement and more particularly awarding the full back wages though it is deposed by the respondent workman that he was earning during this period. The Labour Court has considered this part of the deposition of the respondent workman as earning something to survive. In para 9 of its judgment and award at page 16/17 it is specifically mentioned that the respondent workmen was earning about Rs.400/- to Rs.500/and with that meager amount he was able to support his family by incurring further debt and on the date of the deposition the respondent workman had a debt of Rs.5,000/-.

#. Mr.Devnani, appearing for the respondent workman invited the attention of this court to a decision in the matter of M/s.Singareni Colieries "Co. Ltd., Vs. Sk.Anwar Basha & Ors. of the Hon'ble High Court of Andhra Pradesh, reported in 1996 (3) LLJ (Supp.) page 971. The Hon'ble High Court of Andhra Pradesh has held that when the court has to consider the term "gainful employment" the gainful employment for short period to save from starvation should not be taken into account while computation of payment of back wages is to be made. Mr.Devnani, the learned advocate for the respondent workman submits that the petitioner has not complied with the judgment and award of the Labour Court till date. Mr.Devnani, produces a copy of the contempt petition which is prepared for being filed in this court. Mr.Devnani, has also produced a copy of the letter addressed by the petitioner to the learned advocate dated 29.1.2000 wherein it is stated that the respondent workmen is not reinstated in view of the pendency of the matter before this court.

#. In view of the aforesaid facts the petitioner is directed to reinstate the respondent workmen within four weeks from the date of receipt of writ of this court. It

is directed that the petitioner shall pay the arrears of back wages which is now reduced to 75% (instead of 100% granted by the Labour Court) to the petitioner within three months from the date of receipt of the writ of this court.

#. Mr.Munshaw, the learned advocate for the petitioner submitted that assuming for the sake of argument that the respondent workman was earning some meager amount the same ought to have been taken into consideration by the Labour Court while granting 100% back wages. There is some substance in the submission made by Mr.Munshaw on behalf of the petitioner. Hence the judgment and award of the Labour Court is modified to a limited extent only. The respondent workman shall get (instead of 100% back wages) 75% of the back wages. The award is modified only to the aforesaid extent.

#. Rule is made absolute in the aforesaid terms with no order as to costs.

kks